

D-2939CIP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
PATENT

In the application:

Serial No. 08/704,159

For: MULTIVALENT VACCINE FOR  
CLOSTRIDIUM BOTULINUM  
NEUROTOXIN

ASSOCIATE POWER OF ATTORNEY

Assist. Commissioner for Patents  
Washington, DC 20231

Sir:

In the matter of the above-identified application, I hereby  
appoint as associate attorneys:

Donald E. Stout, Reg. No. 34,493, Frank J. Uxa, Reg. No. 25,812, Robert D. Buvan, Reg. No. 32,460,  
Kenton R. Mullins, Reg. No. 38,331, Guy Cumberbatch, Reg. No. 36,114, Jo Anne M. Ybsen, Reg. No. 42,243  
Linda Alyson Fox, Reg. No. 38,882 and Duan L. Nguyen, Reg. No. 48,957

for the purpose of obtaining certified copies of this application  
and a complete file history in the Patent and Trademark Office.

Signed this 17<sup>th</sup> day of April, 2001.

Stephen Donovan  
Stephen Donovan  
Attorney for Applicant  
Reg. No. 33,433  
Allergan - T2/2E  
PO Box 19534  
Irvine, CA 92623-9534

D-2939CIP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
PATENT

In the application of:  
Williams et al.

Serial No. 08/704,159

Filed: August 28, 1996

For: MULTIVALENT VACCINE FOR  
CLOSTRIDIUM BOTULINUM  
NEUROTOXIN

ASSOCIATE POWER OF ATTORNEY

Assist. Commissioner for Patents  
Washington, DC 20231

Sir:

In the matter of the above-identified application, I hereby  
appoint as associate attorneys:

Stephen Donovan, Reg. No. 33,443; Carlos A. Fisher, Reg. No. 36,510; Martin A. Vost, Reg. No. 25,208;  
Frank J. Ury, Reg. No. 25,812 and Quan L. Nguyen, Reg. No. 48,957

to prosecute said application, to make alterations and amendments  
therein, and to transact all business in the Patent and Trademark  
Office connected therewith.

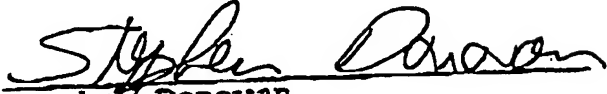
D-2939CIP

2

Please direct all correspondence and telephone calls to:

Frank J. Uxa  
4 Venture, Suite 300  
Irvine, CA 92618  
Telephone: (949) 450-1750  
Facsimile: (949) 450-1764

Signed this 17<sup>th</sup> day of April, 2001.

  
Stephen Donovan  
Attorney for Applicant  
Reg. No. 33,433  
Allergan - T2/2E  
PO Box 19534  
Irvine, CA 92623-9534

D-2939CIP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
PATENT

In re application of:

Williams ET AL

Serial No. 08/704,159

Filed: August 28, 1996

For: MULTIVALENT VACCINE FOR  
CLOSTRIDIUM BOTULINUM  
NEUROTOXIN

) Group Art Unit: 1648  
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)

Examiner: Li, B.

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper for  
Application Serial No. 08/704,159 is being  
facsimile transmitted to the Patent and  
Trademark Office fax number 703/308-4242  
on the date shown below.

December 3, 2001

Kyle Yesland - Kyle Yesland

ASSOCIATE POWER OF ATTORNEY

Honorable Commissioner for Patents  
Washington, DC 20231

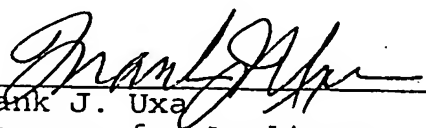
Sir:

In the matter of the above-identified application, I hereby  
appoint as an associate attorney:

Kyle Yesland, Reg. No. 45,526

to prosecute said application, to make alterations and amendments  
therein, and to transact all business in the Patent and Trademark  
Office connected therewith.

Signed this 3<sup>rd</sup> day of DECEMBER, 2001.

  
\_\_\_\_\_  
Frank J. Uxa  
Attorney for Applicant  
Reg. No. 25,612  
4 Venture, Suite 300  
Irvine, CA 92618  
Telephone: (949) 450-1750  
Facsimile: (949) 450-1764

## DECLARATION FOR PATENT APPLICATION

Serial No.: 08/704,159

Filed: 08/28/96

As a below-named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated next to my name. I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled **MULTIVALENT VACCINE FOR CLOSTRIDIUM BOTULINUM NEUROTOXIN**, the specification of which is attached hereto. I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56(a).

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

08/405,496	03/16/95	Pending
<i>Application Serial No.</i>	<i>Filing Date</i>	<i>Patented, Pending or Abandoned</i>

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of Sole or First Inventor: James A. Williams

Inventor's Signature: James A. Williams Date: 11/18/96  
 Residence: 6420 Pueblo Court, Lincoln, Nebraska 68516  
 Citizenship: United States of America  
 Post Office Address: 6420 Pueblo Court, Lincoln, Nebraska 68516

Full Name of Second Joint Inventor: Bruce S. Thalley

Inventor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Residence: 126 Marinette Trail, Madison, Wisconsin 53705  
 Citizenship: United States of America  
 Post Office Address: 126 Marinette Trail, Madison, Wisconsin 53705



52  
17350  
UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

DECEMBER 23, 2000

PTAS



\*101500875A\*

ALLERGAN, INC.  
STEPHEN DONOVAN  
BLDG. T2-7H  
2525 DUPONT DRIVE  
IRVINE, CA 92612

**RECEIVED**

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

JAN 04 2001

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

**LEGAL PATENTS**

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 09/26/2000

REEL/FRAME: 011183/0764  
NUMBER OF PAGES: 12

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

OPHIDIAN PHARMACEUTICALS, INC.

DOC DATE: 03/31/2000

ASSIGNEE:

ALLERGAN, INC.  
ALLERGAN BOTOX LIMITED  
2525 DUPONT DRIVE  
IRVINE, CALIFORNIA 92612

SERIAL NUMBER: 08704159  
PATENT NUMBER:

FILING DATE: 08/28/1996  
ISSUE DATE:

TONYA LEE, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

10-31-2000

U.S. Department of Commerce  
Patent and Trademark Office  
**PATENT**



101500875

**RECORDATION FORM COVER SHEET  
PATENTS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**

- ☒ New **9.26.00**
- ☐ Resubmission (Non-Recordation)  
Document ID#
- ☐ Correction of PTO Error  
Reel #  Frame #
- ☐ Corrective Document  
Reel #  Frame #

**Conveyance Type**

- ☒ Assignment ☐ Security Agreement
- ☐ License ☐ Change of Name
- ☐ Merger ☐ Other
- U.S. Government**  
(For Use ONLY by U.S. Government Agencies)
- ☐ Departmental File ☐ Secret File

**RECEIVED**

JAN 04 2001

**LEGAL/PATENTS**

**Conveying Party(ies)**

☐ Mark if additional names of conveying parties attached

Name (line 1) **Ophidian Pharmaceuticals, Inc.**

Execution Date  
Month Day Year  
**03/31/2000**

Name (line 2)

**Second Party**

Name (line 1)

Execution Date  
Month Day Year

Name (line 2)

**Receiving Party**

☐ Mark if additional names of receiving parties attached

Name (line 1) **Allergan, Inc.**

Name (line 2) **Allergan Botox Limited**

Address (line 1) **2525 Dupont Drive**

Address (line 2)

Address (line 3) **Irvine**

**California**

**92612**

City

State/Country

Zip Code

☐ If document to be recorded  
is an assignment and the  
receiving party is not  
domiciled in the United  
States, an appointment  
of a domestic  
representative is attached.  
(Designation must be a  
separate document from  
Assignment.)

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**FOR OFFICE USE ONLY**

**Correspondent Name and Address**

Area Code and Telephone Number **714 246 4026**

Name **Stephen Donovan**

Address (line 1) **Allergan, Inc.**

Address (line 2) **Bldg. T2-7H**

Address (line 3) **2525 Dupont Drive**

Address (line 4) **Irvine, CA 92612**

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments. #

**Application Number(s) or Patent Number(s)**

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)

**US08/704,159**

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month Day Year

**Patent Cooperation Treaty (PCT)**

Enter PCT application number  
only if a U.S. Application Number  
has not been assigned.

PCT **US97/15394**

PCT

PCT

PCT

PCT

PCT

**Number of Properties**

Enter the total number of properties involved. # **2**

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$ **80.00**

Method of Payment:  
Deposit Account

Enclosed ☐

Deposit Account ☒

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

# **01-0885**

Authorization to charge additional fees:

Yes ☒

No ☐

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

**Stephen Donovan**

Name of Person Signing

Registration No. 33,433

Signature

Date

**7/26/00**



## AGREEMENT

THIS AGREEMENT has an effective date of March 21, 2000 and is between Ophidian Pharmaceuticals, Inc., a Delaware Corporation having a place of business at 5445 East Cheryl Parkway, Madison, Wisconsin 53711 ("OPHIDIAN") and Allergan, Inc., a Delaware Corporation, having a place of business at 2525 Dupont Drive, Irvine, California 92612, and its affiliate Allergan Botox Limited, an Irish corporation (collectively "ALLERGAN").

WHEREAS OPHIDIAN is the owner of certain patents and patent applications relating to recombinant botulinum toxins;

WHEREAS, ALLERGAN wishes to acquire the entire right, title and interest in and to the recombinant botulinum toxins patents and applications owned by OPHIDIAN;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

"PATENT ESTATE" means the patents and patent applications set forth on the attached Appendix 1.

1. Upon the receipt of payment as set forth in paragraph 4, OPHIDIAN hereby sells, assigns, transfers and sets over to ALLERGAN, all right, title and interest, throughout the world, possessed by OPHIDIAN in and to the PATENT ESTATE.
2. Upon the receipt of payment as set forth in paragraph 4, OPHIDIAN hereby grants ALLERGAN a royalty free, fully paid up, and irrevocable license in and to any claims in any United States patents and patent applications (and resulting patent or patents), and to any foreign patents and patent applications (and resulting patent or patents), owned by OPHIDIAN or in which OPHIDIAN acquires rights in or to within a five year period subsequent to the date of this Agreement, which claims cover any non-type A recombinant botulinum toxin or a derivative or fragment thereof, or a process for making or using any non-type A recombinant botulinum toxin or derivative or fragment thereof, and which is not set forth on the attached Appendix A ("ADDITIONAL PATENT ESTATE"). This license will expire when there is no longer at least one patent within the ADDITIONAL PATENT ESTATE which has at least one unexpired claim.
3. Upon the receipt of payment as set forth in paragraph 4, OPHIDIAN hereby grants ALLERGAN a right of first negotiation regarding any assignment of or license to any claims of any United States patent or patent application, and to any foreign patent or patent application, owned by OPHIDIAN or in which OPHIDIAN acquires rights in or to, which claims cover any non-type A recombinant botulinum toxin or a derivative or fragment thereof, or a process for making or using any non-type A recombinant botulinum toxin or derivative or fragment, and which is not within

the scope of articles 1 or 2 above. Thus, the right of first negotiation set forth in this article 3 with regard to a license does not come into effect until March 21, 2005. The right of first negotiation set forth in this article 3 with regard to an assignment comes into effect as of March 21, 2000.

4. In consideration of the foregoing, within ten (10) days of the effective date of this Agreement, ALLERGAN agrees to deliver to OPHIDIAN

5. ALLERGAN acknowledges that the assignment of the PATENT ESTATE is subject to a license granted by OPHIDIAN to the United States of America, a copy of which license is attached hereto as Appendix 2 (the "LICENSE"). ALLERGAN understands and acknowledges that, as the assignee of the PATENT ESTATE, it is bound by the terms of the LICENSE.

6. Within seven (7) days of the effective date of this Agreement, OPHIDIAN shall submit the LICENSE to the U.S. Patent and Trademark Office for recordation, and shall also simultaneously furnish a copy of the LICENSE to appropriate United States government officials as notice to the licensee of the granting of the LICENSE.

7. OPHIDIAN agrees to cooperate fully, at ALLERGAN's expense, to assist ALLERGAN in executing and filing such documents as may be necessary or prudent to vest ownership of the PATENT ESTATE in ALLERGAN. OPHIDIAN also agrees to cooperate fully, at ALLERGAN's expense, to assist ALLERGAN in prosecuting, enforcing or defending any of the PATENT ESTATE, and OPHIDIAN further covenants and agrees that it will communicate to ALLERGAN or to its successors, legal representatives and assigns, any facts known to it regarding the PATENT ESTATE, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuation-in-part, continuing and reissue applications, make all rightful oaths and generally do everything possible to aid ALLERGAN or its successors, legal representatives and assigns, to obtain and enforce proper patent protection for the PATENT ESTATE in all countries.

8. OPHIDIAN and its employees and officers agree to sign and promptly return to ALLERGAN all required documents such as declarations of inventorship, assignment documents and patent prosecution related documents and declarations so that ALLERGAN can file and expeditiously prosecute one or more patent applications, as it may decide in relation to the PATENT ESTATE.

9. OPHIDIAN represents and warrants that it owns the entire right, title and interest in the PATENT ESTATE and that it has full power and authority to enter into this Agreement.

10. OPHIDIAN hereby represents and warrants that it has no knowledge, except as otherwise disclosed to ALLERGAN prior to the signing of this Agreement,

that the exercise of the PATENT ESTATE would or might infringe the rights, including patent rights, of any third party, and that it has no knowledge of and that no claims have been made from which it can be inferred that any claim of any patent or application encompassed by the PATENT ESTATE is or may be invalid.

11. The parties hereto shall consult with each other before issuing any public announcement or press release, or otherwise making any public statement with respect to this Agreement, or the subject matter hereof and neither of them shall issue or make any public statement prior to obtaining the other party's approval, which approval shall not be unreasonably withheld or delayed. No such approval shall be necessary to the extent disclosure may be required by applicable law or the rules or regulation of any stock exchange. However the party preparing to make any such disclosure shall provide the other party reasonable prior notice of the timing and content of any such disclosure. The parties will use reasonable effects to coordinate an initial public statement, if any, relating to this Agreement so that any such public statement by each party can be made contemporaneously.

12. OPHIDIAN agrees that it will not challenge the validity, scope or enforceability of any of the PATENT ESTATE.

13. The parties' confidential disclosure agreement executed on 3 February 2000 and modified 10 February 2000 is attached hereto and incorporated herein by reference.

14. This Agreement may be amended or modified only by written instrument executed by all the parties hereto.

15. Notices shall be in writing and may be delivered by certified mail addressed to the parties at the addresses listed at the beginning of this agreement or such other address as either party may direct by written notice. Notices shall be deemed to have been given upon actual receipt or within three (3) days of mailing by first class mail in the United States of America.

16. The relationship of the parties under this Agreement is one of independent contractors only. In no event shall either party, or any of its employees, agents, servants or contractors be deemed agents or employees of the other party. Neither party has any authority to bind or obligate or incur any liability on behalf of the other, and no such authority shall be implied.

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration by an entity, such as JAMS or ENDISPUTE which uses retired judicial officers as arbitrators, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties shall bear their own costs of arbitration, and shall bear an equal share of the arbitrator's fees and expenses unless the arbitrator finds that the party seeking arbitration is acting in bad faith, or frivolously, or in a manner

calculated to harass the defending party, in which case the arbitrator may assess all or a greater portion of the costs of arbitration, including actual attorneys fees, against the party who originally sought the arbitration. If arbitration is requested by ALLERGAN, any arbitration proceeding will take place in Wisconsin applying Wisconsin law. If arbitration is requested by OPHIDIAN, any arbitration proceeding will take place in California applying California law.

18. This Agreement shall be binding upon and enure to the benefit of the parties hereto and to their successors and assigns.

19. This agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and may be amended or modified only by written instrument executed by all the parties hereto. This agreement supercedes all previous communications, representations, understandings and agreements, either oral or written, between the parties or any official or representative thereof with respect to the subject of this Agreement. No representations or warranties are given by either party except for those set forth herein.


IN WITNESS WHEREOF, the parties hereto have affixed their signatures as of the date shown given.

OPHIDIAN PHARMACEUTICALS, INC

  
Douglas C. Stafford, Ph.D.  
President and Chief Executive Officer

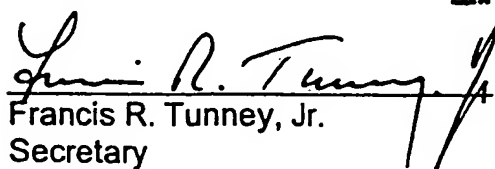
Date: March 29, 2000

ALLERGAN, INC

  
Lester J. Kaplan, Ph.D.,  
President, Research & Development

Date: March 31, 2000

ALLERGAN BOTOX LIMITED

  
Francis R. Tunney, Jr.  
Secretary

Date: March 31, 2000



520  
UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

ASSISTANT SECRETARY AND COMMISSIONER 17356-PCF  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

DECEMBER 23, 2000

PTAS

ALLERGAN, INC.  
STEPHEN DONOVAN  
BLDG. T2-7H  
2525 DUPONT DRIVE  
IRVINE, CA 92612



**RECEIVED**

JAN 04 2001

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

**LEGAL/PATENTS**

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 09/26/2000

REEL/FRAME: 011177/0325  
NUMBER OF PAGES: 13

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

OPHIDIAN PHARMACEUTICALS, INC.

DOC DATE: 03/31/2000

ASSIGNEE:

ALLERGAN, INC.  
2525 DUPONT DRIVE  
IRVINE, CALIFORNIA 92612

SERIAL NUMBER: 08405496  
PATENT NUMBER: 5919665

FILING DATE: 03/16/1995  
ISSUE DATE: 07/06/1999

SERIAL NUMBER:  
PATENT NUMBER:  
PCT NUMBER: US9513737

FILING DATE:  
ISSUE DATE:

011177/0325 PAGE 2

TARA WASHINGTON, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

10-31-2000



101500876

U.S. Department of Commerce  
Patent and Trademark Office  
**PATENT****RECORDATION FORM COVER SHEET  
PATENTS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**☒ New  
☐ Resubmission (Non-Recordation)  
Document ID# ☐ Correction of PTO Error  
Reel #  Frame #   
☐ Corrective Document  
Reel #  Frame # **Conveyance Type**☒ Assignment  
☐ License  
☐ Merger  
☐ Security Agreement  
☐ Change of Name  
☐ OtherU.S. Government  
(For Use ONLY by U.S. Government Agencies)☐ Departmental File ☐ Secret File**RECEIVED**

JAN 04 2001

**LEGAL/PATENTS****Conveying Party(ies)**☐ Mark if additional names of conveying parties attachedName (line 1)  Ophidian Pharmaceuticals, Inc.Execution Date  
Month Day Year  
03/31/2000Name (line 2) **Second Party**Name (line 1) Execution Date  
Month Day Year  
Name (line 2) **Receiving Party**☐ Mark if additional names of receiving parties attachedName (line 1)  Allergan, Inc.Name (line 2)  Allergan Botox LimitedAddress (line 1)  2525 Dupont DriveAddress (line 2) Address (line 3)  Irvine California 92612

City

State/Country

Zip Code

☐ If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name Address (line 1) Address (line 2) Address (line 3) Address (line 4) **FOR OFFICE USE ONLY**

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practices. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**Correspondent Name and Address**

Area Code and Telephone Number **714 246 4026**

Name **Stephen Donovan**

Address (line 1) **Allergan, Inc.**

Address (line 2) **Bldg. T2-7H**

Address (line 3) **2525 Dupont Drive**

Address (line 4) **Irvine, CA 92612**

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Application Number(s) or Patent Number(s)**

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)


**US 5919,665**  
**South Africa**  
**95/8990**


If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month Day Year

**Patent Cooperation Treaty (PCT)**

Enter PCT application number  
only if a U.S. Application Number  
has not been assigned.

PCT **US95/13737**

PCT

PCT

PCT

PCT

PCT

**Number of Properties**

Enter the total number of properties involved.

#

**3**

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$ **120.00**

Method of Payment:  
Deposit Account

Enclosed ☐

Deposit Account ☒

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

**01-0885**

Authorization to charge additional fees:

Yes

☒

No

☐


**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

**Stephen Don van**

Name of Person Signing

Registration No. 33,433



Signature

**9/26/00**

Date



## AGREEMENT

THIS AGREEMENT has an effective date of March 21, 2000 and is between Ophidian Pharmaceuticals, Inc., a Delaware Corporation having a place of business at 5445 East Cheryl Parkway, Madison, Wisconsin 53711 ("OPHIDIAN") and Allergan, Inc., a Delaware Corporation, having a place of business at 2525 Dupont Drive, Irvine, California 92612, and its affiliate Allergan Botox Limited, an Irish corporation (collectively "ALLERGAN").

WHEREAS OPHIDIAN is the owner of certain patents and patent applications relating to recombinant botulinum toxins;

WHEREAS, ALLERGAN wishes to acquire the entire right, title and interest in and to the recombinant botulinum toxins patents and applications owned by OPHIDIAN;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

"PATENT PROPERTIES" means the patents and patent applications set forth on the attached Appendix A.

1. Upon receipt of payment as set forth in paragraph 4, OPHIDIAN hereby sells, assigns, transfers and sets over to ALLERGAN, all right, title and interest, throughout the world, possessed by OPHIDIAN in and to the PATENT PROPERTIES.

2. Upon receipt of payment as set forth in paragraph 4, OPHIDIAN hereby grants ALLERGAN a royalty free, fully paid up, and irrevocable license in and to any claims in any United States patents and patent applications (and resulting patent or patents), and to any foreign patents and patent applications (and resulting patent or patents), currently owned by OPHIDIAN or in which OPHIDIAN acquires rights in or to within a five year period subsequent to the effective date of this Agreement, which claims cover any type A recombinant botulinum toxin or a derivative or fragment thereof, or a process for making or using any type A recombinant botulinum toxin or derivative or fragment thereof, and which is not set forth on the attached Appendix A ("ADDITIONAL PATENT PROPERTIES"). This license will expire when there is no longer at least one patent within the ADDITIONAL PATENT PROPERTIES which has at least one unexpired claim.

3. Upon receipt of payment as set forth in paragraph 4, OPHIDIAN hereby grants ALLERGAN a right of first negotiation regarding any assignment of or license to any claim in any United States patent or patent application, and to any foreign patent or patent application, owned by OPHIDIAN or in which OPHIDIAN acquires rights in or to, which claims cover any type A recombinant botulinum toxin or a derivative or fragment thereof, or a process for making or using any type A recombinant botulinum toxin or derivative or fragment, and which is not within the

scope of articles 1 or 2 above. Thus, the right of first negotiation set forth in this article 3 with regard to a license does not come into effect until March 21, 2005. The right of first negotiation set forth in this article 3 with regard to an assignment comes into effect as of March 21, 2000.

4. In consideration of the foregoing, within ten (10) days of the effective date of this Agreement, ALLERGAN agrees to deliver to OPHIDIAN

5. ALLERGAN acknowledges that the assignment of the PATENT PROPERTIES is subject to a license granted by OPHIDIAN to the United States of America, a copy of which license is attached hereto as Appendix "B" (the LICENSE). ALLERGAN understands and acknowledges that, as the assignee of the PATENT PROPERTIES, it is bound by the terms of the LICENSE. ALLERGAN grants an exclusive license back to OPHIDIAN as to the claims of the South African Patent 95/8990 directed to C. difficile (see LICENSE B attached as Appendix C).

6. Within seven (7) days of the effective date of this Agreement, OPHIDIAN shall submit the executed LICENSE to the U.S. Patent and Trademark Office for recordation, and shall also furnish a copy of the LICENSE to appropriate United States government officials as notice to the licensee of the granting of the LICENSE.

7. OPHIDIAN agrees to cooperate fully, at ALLERGAN's expense, to assist ALLERGAN in executing and filing such documents as may be necessary or prudent to vest ownership of the PATENT PROPERTIES in ALLERGAN. OPHIDIAN also agrees to cooperate fully, at ALLERGAN's expense, to assist ALLERGAN in prosecuting, enforcing or defending any of the PATENT PROPERTIES, and OPHIDIAN further covenants and agrees that it will communicate to ALLERGAN or to its successors, legal representatives and assigns, any facts known to it regarding the PATENT PROPERTIES, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuation-in-part, continuing and reissue applications, make all rightful oaths and generally do everything possible to aid ALLERGAN or its successors, legal representatives and assigns, to obtain and enforce proper patent protection for the PATENT PROPERTIES in all countries.

8. OPHIDIAN and its employees and officers agree to sign and promptly return to ALLERGAN all required documents such as declarations of inventorship, assignment documents and patent prosecution related documents and declarations so that ALLERGAN can file and expeditiously prosecute one or more patent applications, as it may decide in relation to the PATENT PROPERTIES.

9. OPHIDIAN represents and warrants that it owns the entire right, title and interest in the PATENT PROPERTIES and that it has full power and authority to enter into this Agreement.

10. OPHIDIAN hereby represents and warrants that it has no knowledge, except as otherwise disclosed to ALLERGAN prior to the signing of this Agreement, that the exercise of the PATENT PROPERTIES would or might infringe the rights, including patent rights, of any third party, and that it has no knowledge of and that no claims have been made from which it can be inferred that any claim of any patent or application encompassed by the PATENT PROPERTIES is or may be invalid.

11. The parties hereto shall consult with each other before issuing any public announcement or press release, or otherwise making any public statement with respect to this Agreement, or the subject matter hereof and neither of them shall issue or make any public statement prior to obtaining the other party's approval, which approval shall not be unreasonably withheld or delayed. No such approval shall be necessary to the extent disclosure may be required by applicable law or the rules or regulation of any stock exchange. However the party preparing to make any such disclosure shall provide the other party reasonable prior notice of the timing and content of any such disclosure. The parties will use reasonable efforts to coordinate an initial public statement, if any, relating to this Agreement so that any such public statement by each party can be made contemporaneously.

12. OPHIDIAN agrees that it will not challenge the validity, scope or enforceability of any of the PATENT PROPERTIES.

13. The parties' confidential disclosure agreement executed on 3 February 2000 and modified 10 February 2000 is attached hereto and incorporated herein by reference.

14. This Agreement may be amended or modified only by written instrument executed by all the parties hereto.

15. Notices shall be in writing and may be delivered by certified mail addressed to the parties at the addresses listed at the beginning of this agreement or such other address as either party may direct by written notice. Notices shall be deemed to have been given upon actual receipt or within three (3) days of mailing by first class mail in the United States of America.

16. The relationship of the parties under this Agreement is one of independent contractors only. In no event shall either party, or any of its employees, agents, servants or contractors be deemed agents or employees of the other party. Neither party has any authority to bind or obligate or incur any liability on behalf of the other, and no such authority shall be implied.

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration by an entity, such as JAMS or ENDISPUTE which uses retired judicial officers as arbitrators, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties shall bear their own costs of arbitration, and shall

bear an equal share of the arbitrator's fees and expenses unless the arbitrator finds that the party seeking arbitration is acting in bad faith, or frivolously, or in a manner calculated to harass the defending party, in which case the arbitrator may assess all or a greater portion of the costs of arbitration, including actual attorneys fees, against the party who originally sought the arbitration. If arbitration is requested by ALLERGAN, any arbitration proceeding will take place in Wisconsin applying Wisconsin law. If arbitration is requested by OPHIDIAN, any arbitration proceeding will take place in California applying California law.

18. This Agreement shall be binding upon and enure to the benefit of the parties hereto and to their successors and assigns.

19. This agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and may be amended or modified only by written instrument executed by all the parties hereto. This agreement supercedes all previous communications, representations, understandings and agreements, either oral or written, between the parties or any official or representative thereof with respect to the subject of this Agreement. No representations or warranties are given by either party except for those set forth herein.

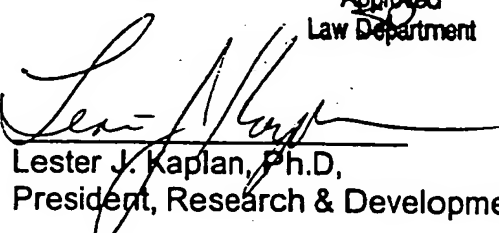
IN WITNESS WHEREOF, the parties hereto have affixed their signatures as of the date shown given.

OPHIDIAN PHARMACEUTICALS, INC.


  
Douglas C. Stafford, Ph.D.  
President and Chief Executive Officer

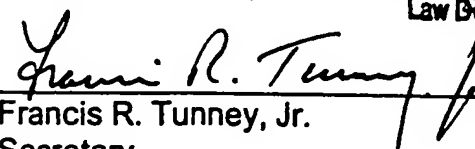
Date: March 29, 2000

ALLERGAN, INC

  
Lester J. Kaplan, Ph.D.,  
President, Research & Development

Date: March 31, 2000

ALLERGAN BOTOX LIMITED 

  
Francis R. Tunney, Jr.  
Secretary

Date: March 31, 2000